

STATE OF ALASKA

IBLA 81-286

Decided May 19, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, refusing approval of assignment of recreation and public purposes lease AA 16045.

Set aside and remanded.

1. Rules of Practice: Generally

Where an appeal is taken from a requirement imposed by BLM and the appellant complies with the requirement during the pendency of the appeal, the case will be remanded for further consideration of the application, providing that such action will not prejudice the interests of the United States or any third party.

APPEARANCES: Joe Davis, Loan Examiner, Department of Commerce and Economic Development of the State of Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This is an appeal by the State of Alaska from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated December 16, 1980. The decision found that an attempted assignment of a recreation and public purposes lease originally granted to the Southern Southeast Regional Aquaculture Association, Inc. (SSRAA), violated the Federal regulations at 43 CFR 2911.1-1(e). 1/ The BLM decision states in part:

In paragraph two [the agreement] states that the assignee, the State of Alaska, will incur none of the assignor's Southern Southeast Regional Aquaculture Association, Inc., obligations under the lease. It provides that

1/ The regulation 43 CFR 2912.1-1(e) provides:

"Leases are not transferable except with the consent of the authorized officer. Transferees shall have all the qualifications of applicants under the Act and shall be subject to all the terms and conditions of the regulations in this part."

the assignor will remain liable for the rent or other obligations under the lease. By not assuming the responsibilities of the lessee under the lease, the assignee violates the regulations stated above and the assignment cannot be approved. The State of Alaska must agree to be liable to the Bureau of Land Management for the obligations required by the lease. Therefore, assignment of the lease to the State of Alaska is hereby not approved.

By letter dated April 3, 1981, appellant submitted a revised agreement and consent to assignment of lease and a copy of an amended assignment of lease executed between the State of Alaska as assignee and SSRAA as assignor which contains revisions deleting conditions which by regulation prevented BLM from approving the assignment.

[1] Where an appeal is taken from a requirement imposed by BLM and the appellant complies with the requirement during the pendency of the appeal, the case will be remanded for further consideration of the application, see Patricia Hickok, 6 IBLA 539 (1972); Carol F. Kramer, A-30509 (Sept. 21, 1965), providing that such action will not prejudice the interests of the United States or any third party. Hauton & Wilcox, 1 IBLA 518 (1970); Kenneth R. Gaither, 1 IBLA 442 (1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is set aside and the case remanded for appropriate action consistent with this opinion.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

